



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,790	07/18/2003	Gregory K. Jones	2098-117	3508
24256	7590	04/06/2005		
DINSMORE & SHOHL, LLP 1900 CHEMED CENTER 255 EAST FIFTH STREET CINCINNATI, OH 45202			EXAMINER RUDDOCK, ULA CORINNA	
			ART UNIT	PAPER NUMBER
			1771	

DATE MAILED: 04/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/622,790

Applicant(s)

JONES, GREGORY K.

Examiner

Ula C Ruddock

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 19-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/17/04 & 10/29/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-18, drawn to a breathable material, classified in class 442, subclass 77.
  - II. Claims 19-25, drawn to a method of making a breathable material, classified in class 156, subclass 60.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product can be made by another method, i.e. by spray coating the crystalline polymer composition and filler on the fabric layer.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Holly Kozlowski on March 21, 2004, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-18. Affirmation of this election must be made by applicant in replying to this Office action. Claims 19-25 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 2, 5-10, 12-16, and 18 are rejected under 35 U.S.C. 102(e) as being anticipated by Gardner et al. (US 2002/0071944). Gardner et al. disclose a breathable composite material useful housewrap [0004 & 0032]. The film and nonwoven fabric layers comprise polyolefin resin compositions, such as high density polyethylene and polypropylene [0020]. Additives are used in the film-forming resins and a preferred additive is calcium carbonate [0021]. The nonwoven fabrics can be spunbonded and can comprise polypropylene filaments [0029 & 0030]. The basis weight of the fabrics can be 15 to 140 g/m<sup>2</sup> (or .44 to 4.13 oz/yd<sup>2</sup> [0032]. The film-forming resin composition includes high density polyethylene [0033]. Regarding claims 11 and 12, multilayered configurations of the nonwoven fabric and breathable film layers, optionally with one or more layers of similar or dissimilar materials, are contemplated. A lightweight laminate having an inner breathable film layer laminated to outer surface layers of continuous filament nonwoven web, such as a polypropylene spunbonded web, provides a composite having a combination of breathability, liquid barrier properties, strength, light weight, and low cost [0025]. As seen in Example 7, the composite has moisture vapor transmission rates in the range claimed by applicant [0074].

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 3, 4, and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gardner et al. (US 2002/0071944), as shown above in view of Carroll et al. (US 2004/0023585) or Sheth (US 4,929,303). Gardner et al. disclose the claimed invention except for the teaching that the nonwoven fabric is a polyethylene cross-laminated open mesh having a basis weight of greater than about 0.7 oz/yd<sup>2</sup>.

Carroll et al. (US 2004/0023585) disclose a vapor permeable, liquid impermeable composite used in housewrap [0002]. The composite requires polyethylene film-forming resin [0038] and calcium carbonate filler [0039]. The composite further comprises a nonwoven fabric layer that has a suitably open mesh and comprises polyethylene [0043]. Furthermore, the scrim can preferably comprises a scrim available under the tradename CLAF® [0065], which is a specific type of fabric disclosed in Applicant's own specification. Sheth (US 4,929,303) disclose composite breathable housewrap films comprising a breathable polyolefin film heat laminate to a nonwoven HDPE fabric (abstract). The composite also requires a calcium carbonate filler (col 3, ln 27-55). Preferred fabrics include the CLAF nonwoven HDPE fabrics. As seen in Table II, the basis weight of the CLAF fabric is greater than 0.7 oz/yd<sup>2</sup>. It would have been obvious to have used either

Art Unit: 1771

Sheth's or Carroll's polyethylene nonwoven open mesh as the fabric layer in Gardner's composite, motivated by the desire to create a housewrap with exceptional strength and durability.

### **Conclusion**

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Calhoun et al. (US 2004/0147636) disclose a breathable film useful in house wrap [0048] comprising a film having micro pores [0037] that comprises high density polyethylene [0094], calcium carbonate filler [0038], and a nonwoven fabric [0110].

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

UCR *UCR*

*Ula Ruddock*

**Ula C. Ruddock**  
Primary Examiner  
Tech Center 1700